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JUL 30 2003

OFFICE OF PETITIONS

In re Application of
Thomas P. Griego and John W. Eichman
Application No. 09/872,214
Filed: May 31, 2001
Attorney Docket No. 31248-1001
Title: SUBMICRON AND NANO SIZE
PARTICLE ENCAPSULATION BY
ELECTROCHEMICAL PROCESS AND
APPARATUS

DECISION ON PETITION
UNDER 37 C.F.R. §1.137(f)

This is a decision on the petition filed on July 3, 2003, pursuant to 37 C.F.R. §1.137(f), to revive the above-identified application.

A grantable petition pursuant to 37 CFR 1.137(f) must be accompanied by:

- (1) Notification of the filing of an application in a foreign country or under a multinational treaty that requires 18 month publication¹;
- (2) The petition fee as set forth in 37 C.F.R. § 1.17(m), and;
- (3) A statement that the entire delay in filing the notice from the date that the notice was due under 35 U.S.C. §122(b)(2)(B)(iii) until the date the notice was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

Petitioner states that the instant nonprovisional application is the subject of an application filed in either a foreign or an international application on December 5, 2002. However, the United States Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

¹ See PTO/SB/36 and paragraph on PTO/SB/64a for further information. Both may be downloaded at <http://www.uspto.gov/web/forms/index.html>.

On June 18, 2002, a Request to Rescind the Nonpublication Request was filed with the Office.

If an applicant makes a nonpublication request and then rescinds the nonpublication request before or on the date a counterpart application is filed in an eighteen-month publication country, the application will be treated as if the nonpublication request were never made².

For the reason set forth above, the petition under 37 C.F.R. §1.137(f) is **DISMISSED AS MOOT**.

As such, no petition fee is necessary. The petition fee has been refunded to petitioner's Deposit Account.

After the mailing of this decision, the application file will be forwarded to Technology Center 1700 for further processing.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.



Paul Shanoski
Attorney
Office of Petitions
United States Patent and Trademark Office

² Rescission generally has the effect of voiding, repealing, or annulling a previous action. See Black's Law Dictionary 1308 (7th ed. 1999) (second definition: to make void, to repeal, or annul). Thus, if an applicant makes a nonpublication request under 35 U.S.C. § 122(b)(2)(B)(i) and then rescinds (pursuant to 35 U.S.C. § 122(b)(2)(B)(ii)) the nonpublication request before or on the date a counterpart application is filed in an eighteen-month publication country, the nonpublication request under 35 U.S.C. § 122(b)(2)(B)(i) will be treated as annulled and the application will be treated as if the nonpublication request had never been made. See <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/35usc122b2binterpret.htm>.